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March 01, 2002

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OFFICE OF THE
EXECUTIVE SECRETARY

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Docket to Determine the Compliance of BellSouth Telecommunications
Inc.'s Operations Support Systems with State and Federal Regulations*
Docket No: 01-00362

Dear David:

Enclosed is the Phase I Post Hearing Brief filed on behalf of AT&T Communications of the South Central States, TCG MidSouth, Inc., the Southeastern Competitive Carriers Association, and MCI WorldCom, Inc. in the above-captioned proceeding.

Copies have been forwarded to parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/nl

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)
Docket to Determine the Compliance)
of BellSouth Telecommunications, Inc.'s)
Operations Support Systems with State)
and Federal Regulations)

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OFFICE OF THE
EXCISES
Docket No. 01-00362RY

**PHASE I POST-HEARING BRIEF
OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, L.L.C.,
TCG MIDSOUTH, INC., THE SOUTHEASTERN COMPETITIVE CARRIERS
ASSOCIATION, AND MCI WORLDCOM, INC.**

AT&T Communications of the South Central States, L.L.C. and TCG MidSouth, Inc. (collectively "AT&T"), the Southeastern Competitive Carriers Association ("SECCA"), and MCI Worldcom, Inc. hereby submit to the Tennessee Regulatory Authority ("TRA" or "Authority") their Post-Hearing Brief for Phase I of the subject docket.

SUMMARY OF ARGUMENT

The Authority's objective in Phase I of this docket is to determine whether it is appropriate to use out-of-state data -- either the Georgia third-party test results or performance measurement data -- as a surrogate for Tennessee-specific data to evaluate the compliance of BellSouth Telecommunications, Inc.'s ("BellSouth's") Operations Support Systems ("OSS") with state and federal law. In effect, the Authority must evaluate whether BellSouth's OSS are sufficiently "regional" to make out-of-state data relevant and probative in Tennessee. Competitive Local Exchange Carriers ("CLECs") assert that the Authority cannot conclude that BellSouth's OSS are "regional" unless BellSouth proves that its OSS: (a) are physically indistinguishable region-wide; and (b) produce substantially the same performance results from state-to-state. If BellSouth's OSS performance varies substantially from state-to-state, the Authority can have no reasonable degree of confidence that out-of-state performance data is truly

reflective of BellSouth's actual OSS performance in Tennessee. The Authority, therefore, must compare BellSouth's actual OSS performance levels on a state-by-state basis to determine regionality even if BellSouth's OSS were to appear indistinguishable on the surface.

Not surprisingly, BellSouth argues that "regionality" can be established merely by showing that its OSS were designed to use similar hardware, software, and processes from state-to-state. BellSouth concedes that its OSS performance can and does vary substantially from state-to-state, but argues that the Authority should turn a blind eye to these performance differences. BellSouth's argument is untenable. Performance does matter. Indeed, performance is paramount in evaluating the extent to which BellSouth's OSS in Tennessee complies with state and federal law. State and federal law do not require BellSouth to use similar hardware, software, and processes throughout its region. Rather, state and federal law requires BellSouth to provide CLECs operating in Tennessee with nondiscriminatory access to wholesale OSS that perform at parity with BellSouth's retail OSS.

The evidence before the Authority does not support a holding that BellSouth's OSS are sufficiently regional to justify the Authority's consideration of the Georgia third-party test results and out-of-state performance data in its assessment of BellSouth's compliance with state and federal law. Indeed, none of the evidence submitted by BellSouth indicates that its OSS perform substantially the same in each of its nine states. BellSouth submitted an attestation conducted by PricewaterhouseCoopers ("PWC"), but PWC's Mr. Lattimore testified at the hearing that: (1) the attestation was not designed or conducted to examine whether the third-party test results in Georgia would be applicable to wholesale systems in Tennessee; and (2) it is not appropriate to use the PWC attestation in support of the argument that performance data in another state (such as Georgia) can be used as a surrogate for performance data in Tennessee. Similarly, Mr. Weeks

from KPMG testified at the hearing that the Georgia third-party test was designed to be "state specific" and using that test in another state such as Tennessee gave him "cause for pause." Even BellSouth's own company witness, Mr. Heartley, acknowledged that BellSouth's OSS performance can and does vary substantially from state-to-state. Moreover, BellSouth has not provided the Authority with any state-by-state comparisons of its OSS performance, even though it collects state-specific performance data. CLECs, however, did submit comparative performance data that demonstrated BellSouth's flow through performance varied widely from state-to-state. Moreover, the state-specific flow through data that the Authority had ordered BellSouth to produce confirms these wide variances.

The evidence in the record indicates that BellSouth's OSS can and does vary substantially from one state to another. Because of these performance variances, the Authority cannot reasonably conclude that performance data from other states or the Georgia third-party test results provide an appropriate basis for evaluating whether BellSouth's OSS in Tennessee complies with state and federal law.

ARGUMENT

The authority must determine the extent to which BellSouth's OSS performance varies from state-to-state

The objective of Phase I of this docket is to decide whether out-of-state data -- either third party tests or performance measurement data -- is sufficiently applicable to Tennessee that such data could reasonably be used as a surrogate for Tennessee-specific data. If BellSouth cannot prove that its OSS performance is substantially the same from state-to-state, then the Authority can have no reasonable degree of confidence that out-of-state performance data is truly reflective of BellSouth's actual OSS performance in Tennessee. Accordingly, the Authority should focus its regionality evaluation on the extent to which BellSouth's OSS performance

varies from one state to another. This common-sense approach is consistent with the Federal Communication Commission's ("FCC") analysis of regionality in its *Kansas/Oklahoma Order*.

The Purpose of Phase I Is To Determine Whether Performance Data And Test Results From Other States Are Applicable To Tennessee

The stated purpose of this docket is "to determine whether existing data or test results derived from OSS testing in other states is reliable and applicable to Tennessee and, in those instances where reliance on such testing is inappropriate, to conduct necessary testing."¹ Ultimately, this docket should provide the Authority with the means by which it can collect the information it needs to conduct an exhaustive and rigorous review of whether CLECs "operating in Tennessee have nondiscriminatory access to BellSouth's Operations Support Systems (OSS) as required by state and federal law."²

The Authority established two phases for this docket. Phase I addresses the applicability of test results and performance data from other states to Tennessee. In other words, the objective of Phase I is to determine whether BellSouth's OSS are sufficiently "regional" to deem out-of-state performance data (either test results or data based on commercial usage) applicable to Tennessee for the purpose of assessing compliance with state and federal law. Phase II will address the reliability of applicable out-of-state test results and performance data, as well as the reliability of Tennessee-specific performance data.

¹ Order Establishing Issues and Procedural Schedule, *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems With State and Federal Regulations*, TRA Docket No. 01-00362 (September 13, 2001) at 1-2.

² *Id.*

The Authority Should Focus Its Phase I Evaluation on BellSouth's Actual OSS Performance from State-to-State

Given the Authority's Phase I objective, the Authority should focus its evaluation on BellSouth's actual OSS performance from state-to-state. Specifically, the Authority should evaluate the extent to which BellSouth's OSS performance varies from one state to another. If BellSouth cannot prove that its OSS performance is substantially the same from state-to-state, then the Authority can have no reasonable degree of confidence that out-of-state performance data is truly reflective of BellSouth's actual OSS performance in Tennessee.

The Authority has broad discretion in evaluating regionality under state and federal law. In the federal arena, the FCC has stated that it "will look to the state to resolve factual disputes wherever possible. Indeed, we view the state's and the Department of Justice's role to be one similar to that of an 'expert witness.'"³ The FCC also has stated that "where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight in making our decision."⁴ In other words, the FCC expects the state to exercise its expert judgment in conducting an exhaustive and rigorous investigation aimed at resolving disputed issues, such as regionality.

The FCC evaluated regionality for the first time in its *Kansas/Oklahoma Order*. The FCC's evaluation was based on the premise that similar OSS systems and processes will result in

³ Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 ¶ 51 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) ("*Bell Atlantic New York Order*").

⁴ *Id.*; see also Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237 ¶ 10 (F.C.C. Jan. 22, 2001) (No. CC 01-29, FCC 00-217) ("*SWBT Kansas/Oklahoma Order*").

similar performance.⁵ However, if objective performance data shows that OSS systems and processes produce different results from state-to-state, then either: (1) the premise is incorrect in that instance; or (2) the OSS systems and processes are not sufficiently similar. In either case, comparative performance data is highly relevant and probative to the issue of OSS regionality. Indeed, the FCC noted in its *Kansas/Oklahoma Order* that "evidence suggesting that billing systems function differently in different states, or competing carriers' assertions that they receive different treatment in different states" could undermine an RBOC's regionality claim.⁶ The FCC, moreover, explained that "evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state."⁷

BellSouth argues that, under the FCC's *Kansas/Oklahoma Order*, comparative performance data is irrelevant to evaluating OSS regionality. That is absurd. Nothing in that order or any other FCC order suggests that the fact-finder (be it the FCC or the Authority) assessing regionality should ignore evidence that BellSouth's actual OSS performance can and does vary substantially from state-to-state. The FCC's practice is to "look at each application on a case-by-case basis and consider the totality of the circumstances, including the origin and quality of information" before it.⁸ In its *Kansas/Oklahoma Order*, the FCC described "what

⁵ *SWBT Kansas/Oklahoma Order* ¶ 113 ("In the end, we find that it is reasonable to conclude that the existence of these similarities will result in similar performance."), ¶ 111 ("Where SWBT has discernibly separate OSS, SWBT demonstrates that its OSS reasonably can be expected to behave the same way in all three states.").

⁶ *SWBT Kansas/Oklahoma Order* ¶ 164 n.472.

⁷ *SWBT Kansas/Oklahoma Order* ¶ 36.

⁸ *SWBT Kansas/Oklahoma Order* ¶ 29.

types of [regionality] evidence [it] found persuasive *in this instance*."⁹ The FCC, however, warned that it was not "establish[ing] an exact script for future applicants to follow."¹⁰ In other words, the FCC's approach in its *Kansas/Oklahoma Order* may be useful for the Authority to consider in structuring its own regionality analysis, but that order does not in any way preclude the Authority from evaluating comparative performance data. To the contrary, evaluating comparative performance data is entirely consistent with all of the FCC's orders, and especially its *Kansas/Oklahoma Order*.

In considering the FCC's *Kansas/Oklahoma Order*, the Authority should note that BellSouth's circumstances here in Tennessee are materially different in at least three important respects than the circumstances facing SWBT in Kansas and Oklahoma. First, unlike SWBT, the FCC has not approved any BellSouth Section 271 applications in other states.¹¹ In fact, the FCC has rejected or was ready to reject each of BellSouth's four previous applications. Second, according to BellSouth, the volume of commercial orders in Tennessee are substantial enough to stand on their own.¹² In Kansas and Oklahoma, the FCC looked to out-of-state performance data only in those instances "where low volumes render SWBT's performance data in Kansas and Oklahoma inconsistent and inconclusive."¹³ Finally, BellSouth is urging the Authority to rely on the results of the Georgia third-party test (but not the Florida test). In its *Kansas/Oklahoma*

⁹ *SWBT Kansas/Oklahoma Order* ¶ 110 (emphasis added).

¹⁰ *SWBT Kansas/Oklahoma Order* ¶ 112.

¹¹ See *SWBT Kansas/Oklahoma Order* ¶ 2.

¹² Tr. 12/4/01 at 155.

¹³ *SWBT Kansas/Oklahoma Order* ¶ 108.

Order, the FCC does not rely directly on the third-party test of SWBT's OSS in Texas, which the FCC had previously found to be limited in scope and depth.¹⁴

The Authority should take a common-sense approach and evaluate the extent to which BellSouth's actual OSS performance varies from one state to another rather than limiting its inquiry to whether BellSouth's OSS appear to be similar on the surface. The Authority is evaluating the regionality of BellSouth's OSS as part of its investigation into whether performance data resulting from out-of-state commercial usage or third party tests should be used as a surrogate for Tennessee-specific data. Thus, the focus of the Authority's inquiry is performance, and not the physical similarities of BellSouth's systems and processes. Accordingly, the Authority cannot reasonably conduct a thorough review without comparing BellSouth's actual OSS performance from state-to-state.

BellSouth's OSS are not physically uniform from state-to-state

As a preliminary matter, even if the Authority were to look solely at the physical similarities of BellSouth's OSS, BellSouth's regionality claims should be dismissed because BellSouth's OSS are not physically uniform from state-to-state. The degree of physical uniformity varies by OSS function (pre-ordering, ordering, provisioning, maintenance and repair, and billing) and sub-function.¹⁵ Among other things, the extent of manual processing involved in performing a particular OSS function impacts the uniformity of that function. In general,

¹⁴ See Memorandum Opinion and Order, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18,354 ¶ 103 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) ("SWBT Texas Order").

¹⁵ Direct Testimony of Jay M. Bradbury, filed October 22, 2001 at 8; Tr. 12/6/01 at 123-24.

more manual processing results in less uniformity.¹⁶ In addition, BellSouth's OSS functions are interdependent on one another such that "errors in one area may manifest themselves in other areas."¹⁷ As a result, the degree of uniformity of one OSS function is affected by the degree of uniformity of other OSS functions. For example, ordering is dependent on obtaining accurate pre-ordering information, which is state-specific. The uniformity of each function, therefore, depends in part on the component with the lowest degree of uniformity, or the "weakest link."¹⁸

Although BellSouth has attempted to increase its uniformity throughout the region, critical aspects of BellSouth's OSS continue to have a low degree of physical uniformity. State-to-state physical differences are most prevalent in the following areas:

- BellSouth's legacy systems;
- Manual processing; and
- Locally performed functions.

These distinctions are meaningful because they can and will cause performance differences from state-to-state throughout the BellSouth region.

For instance, pre-ordering performance may not be the same from state-to-state because BellSouth's legacy systems utilize data that differs by geography.¹⁹ In addition, some states do not have electronic access to certain databases. For example, BellSouth concedes that Tennessee

¹⁶ Bradbury Direct at 8-9; Tr. 12/6/01 at 124.

¹⁷ Rebuttal Testimony of Jay M. Bradbury, filed Nov. 20, 2001 at 4.

¹⁸ See Tr. 12/6/01 at 124.

¹⁹ Bradbury Direct at 9-11.

does not have electronic access to all loop makeup information.²⁰ Furthermore, the physical systems BellSouth uses to support the various states are also different.²¹ This could impact response time and reliability because the different locations require different communications links and different servers could have different loads and levels of reliability.²²

BellSouth's manual processing of orders at its local carrier service centers ("LCSCs") are not uniform. Indeed, evidence in the record indicates that BellSouth's LCSCs have had different error rates, performance standards, and training.²³ This is significant because approximately one-third of all CLEC orders are subjected to manual processing.²⁴ Each CLEC is assigned a specific LCSC in either Atlanta or Birmingham.²⁵ Because of this distribution, Tennessee orders may be processed predominantly at one LCSC, whereas orders from another state (such as Georgia or Florida) may be processed predominantly at a different LCSC.²⁶ Compounding the differences between LCSCs is the fact that input systems used by BellSouth personnel at the

²⁰ See Tr. 12/4/01 at 142-49. If the loop makeup information is not found in BellSouth's Loop Facility Assignment Control System ("LFACS"), other states have electronic access to retrieve such information from the corporate facilities database. Tr. 12/4/01 at 144-45; Tr. 12/4/01 at 203-05. CLECS in Tennessee, however, cannot electronically retrieve that information because Tennessee does not have electronic storage of its plats. Tr. 12/4/01 at 148-49; Tr. 12/4/01 at 203-05.

²¹ Bradbury Direct at 10-11; Tr. 12/4/01 at 114-16. For example, certain states are supported by servers located in Charlotte, North Carolina while other states rely on servers in Birmingham, Alabama. Bradbury Direct at 11; Tr. 12/4/01 at 114-15.

²² Bradbury Direct at 12; Tr. 12/4/01 at 120-21 (admitting that "it may impact" response time, "[i]t depends on the network traffic and what's going on with the network"); Tr. 12/4/01 at 138 (admitting that BellSouth's systems can experience outages on a state-by-state basis, rather than region-wide); Hearing Exhibits 10, 11, & 12.

²³ Tr. 12/5/01 at 86, 87, 91-92.

²⁴ Bradbury Rebuttal at 8.

²⁵ Bradbury Direct at 16.

²⁶ Tr. 12/5/01 at 88-91.

LCSCs (DOE and SONGS) also differ depending on whether the order is for a former South Central Bell state or a Southern Bell state.²⁷

Finally, BellSouth's provisioning and maintenance and repair functions are heavily dependent on manual processes performed along geographic lines.²⁸ The actual provisioning and the actual maintenance and repair work are performed locally. Even BellSouth agrees that timeliness and quality of service "depend on many factors that vary by location such as the skill of the workforce, workload, the physical plant, and customer requirements."²⁹ As a result, BellSouth's provisioning and maintenance and repair functions have a low degree of regionality.

bellsouth has Not demonstrated that the georgia third-party test results and performance data from other states are applicable to tennessee

As explained in detail below, BellSouth has not demonstrated that the Georgia third-party test results and performance data from other states are applicable to Tennessee. The Georgia third-party test is not applicable to Tennessee because it was not designed or intended to be a regional test. Moreover, the evidence shows that the OSS tested in Georgia were different than the OSS that currently support CLECs operating in Tennessee. Given these facts, it is not surprising that KPMG and PWC both declined to endorse the use of the Georgia third-party test in Tennessee. With respect to out-of-state performance data, it is undisputed that BellSouth's OSS performance can and does vary substantially from state-to-state. Moreover, Mr. Lattimore testified that it would be inappropriate for the Authority to use PWC's attestation to support the

²⁷ Bradbury Direct at 16. DOE is used in former Southern Bell states (GA, FL, NC, and SC), while SONGS is used in former South Central Bell states (LA, MS, TN, AL, and KY).

²⁸ Bradbury Direct at 16-17; *see also* Tr. 12/6/01 at 51-52; Tr. 12/6/01 at 85, 87.

²⁹ Tr. 12/6/01 at 85-87; *see also* Bradbury Direct at 17-18.

argument that performance data in another state can be used as a surrogate for Tennessee-specific data.

Based on the evidence in the record, this Authority cannot conclude with any reasonable degree of certainty that BellSouth's OSS perform substantially the same throughout its nine state region. Indeed, BellSouth has failed to produce any real evidence to show that either the Georgia third-party test or performance data from other states is reflective of BellSouth's current OSS performance in Tennessee. Accordingly, the Authority should hold that BellSouth has not proven that the Georgia third-party test results or performance data from other states are applicable to Tennessee.

BellSouth Has Not Demonstrated That The Georgia Third-Party Test Is Applicable To Tennessee

It is inappropriate for this Authority to use the Georgia third-party test in its evaluation of BellSouth's compliance with Section 271 in Tennessee for several important reasons. As explained below, the Georgia test was not designed to be a regional test. Moreover, the systems and processes tested in Georgia differ materially from those BellSouth currently uses in Tennessee. While BellSouth urges this Authority to accept the Georgia test (but not the more recent Florida test), it has failed to present any real evidence that the Georgia test is applicable in Tennessee.

The Georgia Third-Party Test Was Not A Regional Test

The Georgia Test Was Not Designed For Use In Tennessee

Mr. Weeks, the KCI representative with primary responsibility for overseeing the Georgia test, testified that the Georgia test was “designed to be state specific.”³⁰ It was intended for the sole use of the Georgia Commission.³¹ KCI even included a disclaimer in the *Georgia Final Report* indicating the Report’s limited use.³² According to Mr. Weeks:

[W]e never intended the Georgia report to be used by other than the Georgia Commission. That’s clear on the first page of our disclaimers. And so it gives us a little bit of a *cause for pause* that it’s being used in another jurisdiction in a way that we didn’t intend for it to be used and in a way that we explicitly tried to keep from happening.³³

Indeed, KCI performed no work that would substantiate the adequacy of the Georgia test for the purpose of evaluating whether BellSouth’s OSS in Tennessee comply with state and federal law.³⁴ Consequently, KCI was unable to give an opinion on the extent to which the systems, processes, methods, and documentation tested in Georgia would apply to Tennessee.³⁵ Given KCI’s testimony, this Authority can have no confidence that the results of the Georgia test

³⁰ Tr. 12/3/01 at 22, 68 (stating that both the Georgia and Florida third-party tests “were designed to be state specific, both cases”); *see also* Tr. 12/3/01 at 26-27.

³¹ Tr. 12/3/01 at 26-27.

³² Revised Redacted Direct Testimony of Milton McElroy, Jr., filed December 4, 2001, Exhibit MM-3 (“*Georgia Final Report*”) at II-1 (“[O]nly BellSouth and the GPSC have rights to this document. Third-party reliance on this report is not intended and is explicitly prohibited.”).

³³ Rebuttal Testimony of Sharon E. Norris, filed Nov. 20, 2001, Exhibit SEN3PT-5 at 137-38 (emphasis added). KCI would also have similar “reservations” regarding the Florida third-party test being used by jurisdictions other than Florida. Tr. 12/3/01 at 69-70.

³⁴ Tr. 12/3/01 at 28.

³⁵ *See* Tr. 12/3/01 at 28.

are applicable in Tennessee. Accordingly, the Authority should not use the Georgia test in its evaluation of BellSouth's compliance with state and federal law.

The Systems And Processes Tested In Georgia Differ Materially From Those Currently Used In Tennessee

Mr. Weeks concedes that if KCI "measured a process that's no longer in place, . . . the results of [KCI's] test for that aspect of the test aren't relevant."³⁶ BellSouth has admitted that it employed at least three different practices of preferential treatment during the Georgia test that may have inflated the test results. The preferential treatment practices are discussed in depth *infra* Section III(A)(1)(c). According to BellSouth, it does not use these preferential practices to support its wholesale operations in Tennessee. Thus, those aspects of the Georgia test that were affected by BellSouth's preferential treatment are not relevant to Tennessee.

Other aspects of the Georgia test are not relevant to Tennessee because it involved systems that have since been superseded. Indeed, BellSouth admits that in certain instances it is asking this Authority to rely on the testing of outdated systems.³⁷ Some of the current systems that were not evaluated in the Georgia third-party test are:

- OSS-99;³⁸
- RoboTAG;³⁹
- Upgrades to ENCORE;⁴⁰ and

³⁶ Tr. 12/3/01 at 63.

³⁷ Tr. 12/3/01 at 216-17.

³⁸ Tr. 12/3/01 at 209-10.

³⁹ Tr. 12/3/01 at 222-23.

⁴⁰ Tr. 12/3/01 at 39-40.

- BellSouth's new integrated billing system ("IBS").⁴¹

These systems and system upgrades are crucial to CLEC competition in Tennessee. Indeed, more than 80 percent of CLEC transactions take place via OSS-99, the current production version of BellSouth's EDI and TAG interfaces.⁴² OSS-99, however, was not tested in Georgia even though it was introduced into production while the Georgia test was being conducted.⁴³ Six CLECs currently use BellSouth's RoboTAG interface and there are open exceptions and observations on tests conducted on RoboTAG in Florida.⁴⁴ RoboTAG, however, was not tested in Georgia because it was not yet fully developed.⁴⁵ The ability of BellSouth to process commercial volumes and to perform billing functions accurately and timely are also crucial to CLEC competition. Upgrades to BellSouth's production environment ENCORE, as well as its new integrated billing system, however, were not available for testing in Georgia.⁴⁶

The record shows that systems and processes tested in Georgia differ materially from those BellSouth currently uses to support wholesale operations in Tennessee. As a result, many aspects of the Georgia test are not relevant today. Moreover, the Georgia test fails to provide this Authority with valuable information regarding several of the systems and processes BellSouth uses to support wholesale operations in Tennessee. For these reasons, this Authority should find that the Georgia test is not applicable to Tennessee.

⁴¹ Tr. 12/6/01 at 106-08.

⁴² Tr. 12/3/01 at 209-10; *see also* Norris Rebuttal at 5-6.

⁴³ Tr. 12/3/01 at 209-10.

⁴⁴ Tr. 12/3/01 at 222-23.

⁴⁵ Tr. 12/3/01 at 222-23.

⁴⁶ Tr. 12/3/01 at 39-40, Tr. 12/6/01 at 106-08.

BellSouth Engaged In Preferential Treatment Practices During The Third-Party Test

Mr. Weeks concedes that if KCI's test results "reflect[] a business process that no longer exists, then one could argue our results have no bearing on the current performance or the current results."⁴⁷ During the Georgia third-party test, KCI relied extensively on transaction-based tests to measure BellSouth's performance.⁴⁸ One of the goals of transaction-based testing is to enable the tester to "live the CLEC experience."⁴⁹ Accordingly, transaction-based testing requires that test transactions be treated like any other. Indeed, the FCC has noted the importance of putting measures in place to ensure that the tester's transactions do not receive discriminatory preferential treatment.⁵⁰ BellSouth, however, engaged in preferential treatment practices during the third-party test. BellSouth's practice of preferential treatment brings into question the relevance of the Georgia test to Tennessee because BellSouth does not provide such preferential treatment to Tennessee transactions.

During third-party testing, BellSouth altered its business practices to give preferential treatment to orders from KCI in at least three different respects: (1) BellSouth routed third-party test transactions to a dedicated work group; (2) BellSouth gave preferential treatment to orders from Georgia and Florida; and (3) BellSouth gave priority handling to certain orders with KCI company codes. The United States Department of Justice noted its concern over BellSouth's preferential treatment practices in its evaluation of BellSouth's recent joint application to the FCC for Georgia and Louisiana:

⁴⁷ Tr. 12/3/01 at 62.

⁴⁸ McElroy Revised Redacted Direct, Exhibit MM-3, *Georgia Final Report* at II-5.

⁴⁹ *Id.*

⁵⁰ *Bell Atlantic New York Order* ¶¶ 99-100.

The Department is also gravely concerned by BellSouth's admission that it did not process test orders as it would have during the normal course of business. Rather, these orders were identified as test orders and processed with special management supervision.⁵¹

Simply put, BellSouth's preferential treatment tainted the integrity of the entire Georgia test.

BellSouth departed from normal business practices when it routed third-party test requests to a designated work group for processing.⁵² The specially routed requests "bypass[ed] a basket where other CLEC and types of requests [were] placed."⁵³ As a result, BellSouth admits that it is possible that third-party test requests "received a timing advantage . . . up to one hour."⁵⁴ Incredibly, BellSouth cites the level of complexity of the test requests as its reason for routing KCI's orders to a designated work group.⁵⁵ If complexity of the test requests was the impetus, then it is likely that BellSouth assigned its best personnel to the work group handling the test requests. This could have increased the timing advantage these orders already received, as well as increased their accuracy over other orders.

BellSouth also gave preferential treatment to local service requests ("LSRs") submitted from Georgia and Florida over LSRs submitted from other BellSouth states at the Birmingham

⁵¹ Hearing Exhibit 1, Evaluation of the United States Department of Justice, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Georgia and Louisiana* ("DOJ Evaluation"), CC Dckt. No. 01-277, released Nov. 6, 2001 at 5 n.14. BellSouth later withdrew its joint-application for Georgia and Louisiana on December 20, 2001.

⁵² McElroy Revised Redacted Direct at 29.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

and Atlanta LCSCs during the third-party test.⁵⁶ Mr. McElroy admits that Georgia and Florida orders “were handled in an expedited or more timely manner potentially than the other seven states.”⁵⁷

Certain requests with company codes for the third-party tester were also given priority handling, which further calls into question the regionality of BellSouth's OSS.⁵⁸ BellSouth claims that it implemented this priority handling because KCI kept sending its requests to an incorrect fax number identified in the business rules even after BellSouth notified KCI of the correct fax number.⁵⁹ BellSouth's explanation, however, is not supported by the documents in the record. The priority handling was identified by PWC during the interviews it conducted in April 2001.⁶⁰ According to BellSouth, the priority handling was discontinued before PWC issued its attestation on May 3, 2001.⁶¹ KCI, however, did not send requests to the incorrect fax number until after May 3rd.⁶² KCI, moreover, did not continue to fax requests to the wrong fax number as BellSouth claims.⁶³ Rather, KCI followed BellSouth's instructions and used a

⁵⁶ McElroy Revised Redated Direct at 39-40. KCI sent test orders at various times between November 1999 and February 2001, while BellSouth continued to give priority handling to Georgia and Florida orders until April 23, 2001 in at least one of the LCSCs. Tr. 12/3/01 at 234-36.

⁵⁷ Tr. 12/3/01 at 286.

⁵⁸ See Tr. 12/3/01 at 274-77.

⁵⁹ Tr. 12/3/01 at 275-77.

⁶⁰ See Tr. 12/3/01 at 274-75.

⁶¹ Mr. McElroy testified that the issue must have “been resolved to PWC's satisfaction, or they would not have made -- or potentially would not have made their -- issue their opinion on the regionality report if that had still been an issue.” Tr. 12/3/01 at 284-85.

⁶² See Hearing Exhibit 4, Florida Observation 84 (indicating KCI sent LSRs from May 4, 2001 to May 8, 2001); see also Tr. 12/4/01 at 12-13.

⁶³ Tr. 12/4/01 at 47-49.

different fax number than the one specified in the business rules.⁶⁴ Based on the documents in the record, BellSouth's explanation of its priority handling simply is not credible.

The full extent of BellSouth's preferential treatment practices, as well as the potential fallout, will never be known. While Mr. McElroy maintains that he had no knowledge of Georgia and Florida orders receiving priority handling at BellSouth's LCSCs at the time the practice was taking place, he admitted at the hearing that if he had known, he would have shared that information with KCI.⁶⁵ Mr. Weeks testified that "the fact that there was a business practice that did not comport with their normal ongoing business practices is what would have given [him] the concern."⁶⁶ Mr. Weeks further testified that if KCI had known about the preferential treatment it would have "asked the company to cease . . . or at least brought it to the attention of the [Georgia] Commission."⁶⁷

This Authority should not use the Georgia third-party test in Tennessee because of the various preferential treatment practices. Because of the special treatment practices that have been identified, some unknown number of the processes tested by KCI are not the same processes that are used to handle CLEC orders from Tennessee. As a result, much of KCI's previous testing is irrelevant and inapplicable to Tennessee.

⁶⁴ *Id.*

⁶⁵ Tr. 12/3/01 at 241-44. Incredibly, Mr. McElroy first testified that the information was not material to KCI because "[w]e didn't change the way we handled the orders." Tr. 12/3/01 at 241.

⁶⁶ Tr. 12/3/01 at 59-60.

⁶⁷ Tr. 12/3/01 at 55-56.

Areas Critical to the Development of Competition in Tennessee Were Not Tested In The Georgia Third-Party Test

The United States Department of Justice, in its evaluation of BellSouth's October 2001 Section 271 application to the FCC for Georgia and Louisiana, found that one of the "significant limitations" of the Georgia test is its limited scope.⁶⁸ Describing its concern, the Department of Justice pointed to the following deficiencies:

Key areas omitted include testing of the systems for electronic ordering of xDSL-related loops and line sharing; the LENS interface, which is used to place the majority of CLEC orders; the most recent ordering system, OSS99 (an older version was used instead); documentation and support related to the design and development of CLEC interfaces; maintenance and repair and billing work centers; and general support processes, such as for establishing accounts, collocation processes, or training account team personnel.⁶⁹

By design, the Georgia test did not include several areas of testing that have been included in other states.⁷⁰ As Mr. McElroy acknowledged, the following areas were *not* tested in Georgia, but were tested in New York, and are being tested in Florida:

- Account Management;⁷¹
- Network Design, Collocation and Interconnection Planning;⁷²
- Help Desk;⁷³
- CLEC Training;⁷⁴

⁶⁸ Hearing Exhibit 1, *DOJ Evaluation* at 4-5.

⁶⁹ Hearing Exhibit 1, *DOJ Evaluation* at 5 & n.12.

⁷⁰ Norris Rebuttal at 3.

⁷¹ Tr. 12/3/01 at 225-26; Hearing Exhibit 2.

⁷² Tr. 12/3/01 at 228; Hearing Exhibit 2.

⁷³ Tr. 12/3/01 at 228-29; Hearing Exhibit 2.

- Manual Ordering Processes;⁷⁵
- Work Center Support;⁷⁶ and
- Ability to Build Interfaces.⁷⁷

KCI also failed to test unbundled network elements (“UNEs”) sufficiently in Georgia.⁷⁸ BellSouth claims that it offers over eighty UNEs, but KCI only evaluated six in Georgia.⁷⁹ Local number portability (“LNP”) metrics also were not included in the Georgia test.⁸⁰ LNP is critical to competition because it allows customers to retain their own telephone numbers when switching carriers.⁸¹ Although the areas of billing and change management were evaluated in Georgia, the evaluation was not thorough.⁸² Indeed, there are open observations and exceptions in both of these areas in Florida.⁸³

Several critical aspects of volume testing were also not included in the Georgia test. Volume testing is crucial to CLECs because CLECs are dependent on BellSouth’s OSS.

(Footnote cont’d from previous page.)

⁷⁴ See Tr. 12/3/01 at 229-30; Hearing Exhibit 2.

⁷⁵ Manual ordering processes, other than manual ordering for xDSL capable loops, were not tested in Georgia. Tr. 12/3/01 at 230-31; Hearing Exhibit 2. Failing to test manual processes is an especially critical deficiency because BellSouth blamed errors by LCSC personnel for two of the areas it received “Not Satisfied” results. Norris Rebuttal at 9.

⁷⁶ Tr. 12/3/01 at 231; Hearing Exhibit 2.

⁷⁷ See Tr. 12/3/01 at 231-33; Hearing Exhibit 2; *see also* Norris Rebuttal at 6.

⁷⁸ Norris Rebuttal at 7.

⁷⁹ Norris Rebuttal at 7. XDSL was added in the Supplemental Test Plan. Norris Rebuttal at 7 n.6.

⁸⁰ Norris Rebuttal at 11.

⁸¹ Norris Rebuttal at 12.

⁸² Norris Rebuttal at 12-15.

"Inadequate OSS would place CLECs at a competitive disadvantage because they will not be able to assure their customers that the CLECs' service will be at least as accurate, dependable, and fast as service provided by BellSouth."⁸⁴ In Georgia, however, there was no volume testing of manual orders.⁸⁵ A stress test was not conducted in Georgia, yet stress testing is being done in Florida.⁸⁶ In Georgia, peak volume tests were not run in BellSouth's production environment, ENCORE.⁸⁷ Instead, peak volume tests were run in RSIMMS, a test environment with significantly greater capacity than ENCORE.⁸⁸ In Florida, however, volume testing is being conducted in ENCORE, the actual environment BellSouth uses to process orders.⁸⁹

In sum, the Georgia third-party test was severely limited in scope. According to the Department of Justice, "a number of key areas remained outside the parameters of the [Georgia] test."⁹⁰ These "key areas" are critical to the development of competition in Tennessee. Accordingly, they must be duly evaluated. In light of these limitations, this Authority should not use the Georgia test to evaluate BellSouth's OSS in Tennessee.

(Footnote cont'd from previous page.)

⁸³ Norris Rebuttal at 12-15.

⁸⁴ Norris Rebuttal at 16.

⁸⁵ Tr. 12/3/01 at 32.

⁸⁶ Tr. 12/3/01 at 33-34. "[S]tress tests are an attempt to escalate significantly the volumes in order to identify potential weak points in the system." Norris Rebuttal at 19.

⁸⁷ Tr. 12/3/01 at 34.

⁸⁸ Tr. 12/3/01 at 34-39. Indeed, KCI has never conducted volume testing for a third-party OSS test in an artificial test environment in any state other than Georgia. Norris Rebuttal at 16.

⁸⁹ Tr. 12/3/01 at 34.

⁹⁰ Hearing Exhibit 1, *DOJ Evaluation* at 5.

PWC's Attestation Does Not Support Using The Georgia Third-Party Test In Tennessee

PWC's Attestation Was Not Designed To Include The Georgia Third-Party Test

The PWC attestation is the centerpiece of BellSouth's regionality argument with respect to the Georgia third-party test. BellSouth's reliance on PWC's attestation, however, is misplaced because PWC's examination was not designed or conducted to include the Georgia third-party test. Indeed, when asked specifically "whether third-party test results in Georgia would be applicable to the wholesale systems in Tennessee," Mr. Lattimore refused to prescribe to BellSouth's position.⁹¹ Rather, he repeatedly stated "[t]hat's an argument that BellSouth is making, and that's not an argument I'm making."⁹²

Mr. Lattimore also testified that if PWC were to investigate whether the results of the Georgia test were applicable in Tennessee, he would have looked at the extent to which the systems tested in Georgia had changed from the time of the test to the time of PWC's examination.⁹³ Mr. Lattimore stated that PWC would have examined performance data from Georgia and Tennessee and attempted to explain any state-to-state variations.⁹⁴ The examination conducted by PWC in April 2001, however, did not include these areas. Accordingly, PWC's attestation does not support the use of the Georgia third-party test to evaluate BellSouth's compliance in Tennessee with state and federal law.

⁹¹ Tr. 12/5/01 at 7-10.

⁹² Tr. 12/5/01 at 9 (responding to the question: "But your attestation wasn't designed to support that argument?" Mr. Lattimore responded, "Again, that's an argument BellSouth would make, not me").

⁹³ Tr. 12/5/01 at 10-14.

⁹⁴ Tr. 12/5/01 at 14-15.

PWC's Attestation Is Limited By Its Timing

PWC's attestation also does not support the use of the Georgia test in Tennessee because PWC does not attest to the regionality of BellSouth's systems for the period of time during which KCI conducted its testing in Georgia. Mr. Lattimore testified that PWC's attestation is essentially a snapshot in time "as of May 3, 2001" and does not express an opinion for dates prior to May 3rd.⁹⁵ The testing of BellSouth's pre-ordering and ordering OSS in Georgia, however, took place from November 1999 through February 2001.⁹⁶ Indeed, PWC concedes that it would not have made the same attestation prior to April 23, 2001 because of BellSouth's practices of providing preferential treatment to certain orders.⁹⁷ Specifically, Mr. Lattimore testified that an attestation on April 22 "would have required some kind of reference or exception to the treatment or a reference and a description of that exception or a change in [BellSouth's] assertions."⁹⁸ According to Mr. Lattimore, an attestation with such an exception would "not have satisfied [BellSouth's] intention" and BellSouth "would not have liked it."⁹⁹ Because PWC's attestation does not apply to the periods during which KCI conducted the Georgia test, that attestation cannot support use of the Georgia third-party test in Tennessee.

⁹⁵ Tr. 12/5/01 at 17; Tr. 12/5/01 at 147; *see also* Tr. 12/3/01 at 234.

⁹⁶ Tr. 12/3/01 at 234-35. Indeed, PWC did not begin its examination until the week of April 2, 2001. Tr. 12/5/01 at 167.

⁹⁷ Tr. 12/3/01 at 235-36.

⁹⁸ Tr. 12/5/01 at 20.

⁹⁹ *Id.*

BellSouth Has Not Demonstrated That Performance Data From Other States Is Applicable To Tennessee

From college football fields to classrooms in Tennessee, our life experiences teach us that while a particular system might appear to be the same on the surface (e.g., same teacher, same classroom, same text books, same curriculum), that system will often produce different results (e.g., student grades). Accordingly, performance results in one situation (e.g., an "A" student) are not necessarily reflective of performance results in another situation (e.g., a "D" student). The same is true with respect to the performance of BellSouth's OSS across its nine-state region. The Authority cannot logically rely on performance data from other states as being reflective of BellSouth's actual performance in Tennessee unless, based on the evidence before it, the Authority can conclude with a reasonable degree of certainty that BellSouth's OSS perform substantially the same from state-to-state.

The evidence in this case does not establish that BellSouth's OSS perform substantially the same from state-to-state. Indeed, BellSouth concedes that "differences in performance can and do exist" across the BellSouth region and these performance differences can be substantial.¹⁰⁰ BellSouth, however, chose not to provide the Authority with any comparisons of empirical performance data to quantify the degree to which its OSS varies from state-to-state.¹⁰¹ Rather, BellSouth provides only unsubstantiated and self-serving opinion testimony, and even that testimony does not seriously contend that BellSouth's OSS performs substantially the same from state-to-state. On the other hand, the comparative performance data in AT&T's Hearing Exhibit 8 indicates that BellSouth's flow through performance in Tennessee is significantly

¹⁰⁰ Direct Testimony of Alfred Heartley, filed July 31, 2001 at 4; Tr. 12/6/01 at 59.

¹⁰¹ Tr. 12/4/01 at 56-57; Tr. 12/5/01 at 242; Tr. 12/6/01 at 63, 106.

worse than its performance in either Georgia or Florida. The state-specific flow through data that the Authority ordered BellSouth to produce confirms that wide variances in achieved flow through rates exist from state-to-state. Accordingly, based on the evidence in the record, the Authority cannot conclude with any certainty whatsoever that performance data from other states is applicable to Tennessee.

Significant Variations In Performance Can And Do Exist From State-To-State

BellSouth admits that “differences in performance can and do exist” across the BellSouth region and these performance differences can be substantial.¹⁰² Despite these admitted differences, BellSouth did not provide the Authority with any empirical data to quantify the extent to which BellSouth's OSS performance varies from state-to-state. However, Hearing Exhibit 8 (reproduced below) shows that in comparison to its performance in Georgia and Florida, BellSouth provides a significantly lower percentage of mechanized firm order confirmations (“FOCs”) on error-free electronic LSRs submitted by CLECs for Tennessee consumers.¹⁰³

¹⁰² Heartley Direct at 4; Tr. 12/6/01 at 59.

¹⁰³ Tr. 12/4/01 at 62-66; Hearing Exhibits 5, 6, 7, & 8.

AUGUST 2001 -- MONTHLY STATE SUMMARY

UNE Product	No.	FOC	Tennessee	CLEC VOLUME	
				Georgia	Florida
Port/Loop Combo.	B.1.9.3	Mechanized	3,051	42,488	8,204
	B.12.3	Part. Mechanized	1,801	11,440	4,240
		Total Mechanized	4,852	53,928	12,444
		Mech./Tot. Mech	62.88%	78.79%	65.93%
2W An. Loop Design	B.1.9.8	Mechanized	73	86	1,026
	B.12.8	Part. Mechanized	380	215	472
		Total Mechanized	453	301	1,498
		Mech./Tot. Mech	16.11%	28.57%	68.49%
2W An. Loop Design w/ LNP	B.1.9.12	Mechanized	4	27	53
	B.12.12	Part. Mechanized	119	227	695
		Total Mechanized	123	254	748
		Mech./Tot. Mech	3.25%	10.63%	7.09%
LNP Standalone	B.1.9.17	Mechanized	70	764	778
	B.12.17	Part. Mechanized	142	692	888
		Total Mechanized	212	1,456	1,666
		Mech./Tot. Mech	33.02%	52.47%	46.70%

The percentage of mechanized FOCs is a reasonable surrogate for state-specific achieved flow through rates because both measure the rate at which error-free electronic LSRs flow through BellSouth's ordering OSS without manual intervention.¹⁰⁴ Using a surrogate for achieved flow through rates at the hearing was necessary because BellSouth had not yet produced state-specific achieved flow through rates as ordered by the Authority.

¹⁰⁴ Tr. 12/3/01 at 120-21.

BellSouth finally produced state-specific flow through rates in late February.¹⁰⁵ This data confirms that BellSouth's achieved flow through rates vary widely from state-to-state. The matrix below sets forth the ranges of achieved flow through rates from March to December 2001. Specifically, the stated percentages equal the difference between the highest and lowest achieved flow through rate experienced by any state for the particular month and product category (residential resale, business resale, UNEs, aggregate of non-LNP products, and LNP).¹⁰⁶ These ranges represent the extent to which BellSouth's achieved flow through rates vary in its nine-state region.

**Achieved Flow Through Rates
Range of Variance
(High State Rate minus Low State Rate)**

Month (2001)	Residential Resale	Business Resale	UNE	Aggregate Non-LNP	LNP
March	12.43%	16.36%	16.37%	12.12%	68.00%
April	11.05%	33.03%	20.72%	11.61%	74.00%
May	10.11%	11.80%	15.38%	10.49%	69.00%
June	14.00%	16.53%	22.23%	14.50%	78.00%
July	16.66%	27.80%	16.26%	14.03%	69.00%
August	12.93%	14.43%	30.33%	19.43%	83.00%
September	8.40%	23.25%	16.63%	13.31%	82.00%
October	9.96%	12.96%	17.63%	12.05%	80.00%
November	11.30%	24.77%	28.00%	10.48%	80.00%
December	11.56%	20.71%	30.46%	8.88%	75.00%
Avg. Range	11.84%	20.16%	21.40%	12.69%	75.80%

¹⁰⁵ By separate motion, we have requested that the state-specific flow through results on CD#3 be admitted into the record. Mr. Hicks stated that BellSouth has no objection to admitting these results.

¹⁰⁶ For example, in the "Report: Percent Flow Through Service Requests (State Summary - UNE) Report Period: December 2001," the state with the highest rate of "Percent Achieved Flowthrough" was Georgia, with 76.76%. The state with the lowest rate was Mississippi, with 46.30%. Thus, the range of variance between all states for UNE "Percent Achieved Flowthrough" in December 2001 equaled 30.46% (i.e., 76.76% minus 46.30%).

Clearly, the average monthly variance range for this ten month period is significant for each product type, especially for more commercially attractive products in business resale, UNEs, and LNP (over 20 percent, 21 percent, and 75 percent respectively).

Mr. Pate conceded at the hearing that explaining such performance variances should be part and parcel of BellSouth's regionality case.¹⁰⁷ BellSouth, however, offers no reliable explanation for its performance variances.¹⁰⁸ BellSouth speculates generally that differences in performance are caused by factors outside its control.¹⁰⁹ BellSouth, however, concedes that differences in performance can be caused by factors within its control and it has at least some ability to accommodate and manage state-to-state differences that are allegedly outside of its control.¹¹⁰ Indeed, despite all of the variables that may affect performance from state-to-state, BellSouth measures state-to-state performance differences because it finds it to be a helpful management tool.¹¹¹ When asked how the Authority can determine whether performance differences are caused by factors inside BellSouth's control or outside of that control, BellSouth stated:

I think the TRA and the directors would have to look at different data. I don't think you could look at one set of data to determine that. I think you'd have to look at different things. I think you'd have to look at the different measures that we have.¹¹²

¹⁰⁷ Tr. 12/4/01 at 71.

¹⁰⁸ Tr. 12/4/01 at 71 ("I think we should be able to explain the variances. But it's not part of my testimony"); Tr. 12/6/01 at 96-97; Tr. 12/4/01 at 109-11 (regarding Mr. Varner's stricken testimony).

¹⁰⁹ Tr. 12/6/01 at 62.

¹¹⁰ See 12/6/01 at 62-64.

¹¹¹ Tr. 12/6/01 at 66-67.

¹¹² Tr. 12/6/01 at 63.

Nevertheless, BellSouth chose not to provide the Authority with any performance data to quantify or explain state-to-state performance differences.

It is undisputed that BellSouth's OSS performance varies from state-to-state, and such variances can be substantial. Hearing Exhibit 8 and BellSouth's state-specific achieved flow through rates are prime examples of this. It also is undisputed that explaining such variances should be "part and parcel" of BellSouth's regionality case.¹¹³ In addition, it is undisputed that the Authority needs performance data and other information to ascertain the root cause of state-to-state performance variances.¹¹⁴ BellSouth, however, chose not to provide the Authority with any comparative performance data to support its regionality case. As a result, the Authority cannot reasonably conclude that performance data from other states is applicable to Tennessee because the Authority has no reliable evidence that BellSouth's OSS performance is substantially the same throughout its nine-state region.

PWC's Attestation Does Not Support Using Performance Data From Other States In Tennessee

Rather than providing comparative performance data to support its argument that performance data from other states is applicable to Tennessee, BellSouth simply urges this Authority to rely on PWC's "attestation." PWC's attestation, however, has no probative value. PWC did not attest that performance data from other states is applicable to Tennessee, which is the question at issue here. Furthermore, PWC's attestation was materially flawed in both design and execution. The Authority, moreover, has good reason to question PWC's judgment and

¹¹³ Tr. 12/4/01 at 71.

¹¹⁴ See Tr. 12/6/01 at 63.

independence in this matter. For these reasons, the Authority should find that PWC's attestation has no probative value with respect to the Phase I issues.

PWC Did Not Attest That Performance Data In Other States Is Applicable To Tennessee.

Mr. Lattimore testified that, in his opinion, it was not appropriate to use the PWC attestation in support of the argument that performance data in another state (such as Georgia) can be used as a surrogate for performance data in Tennessee.¹¹⁵ According to Mr. Lattimore, if PWC had been asked to examine whether performance data from other states in BellSouth's region is representative of BellSouth's wholesale operations in Tennessee, PWC "would have had to structure the engagement differently, would probably have drafted a different assertion about performance data for [it] to design a whole different set of tests against."¹¹⁶ Indeed, Mr. Lattimore conceded that PWC did not examine whether BellSouth's systems produce the same results from state-to-state because that was outside the scope of the examination.¹¹⁷ Given Mr. Lattimore's testimony, the Authority cannot reasonably rely on the PWC attestation to conclude that performance data from other states is indicative of BellSouth's OSS performance in Tennessee.

PWC's Attestation Was Materially Flawed

PWC's attestation was materially flawed both in its design and its execution. These material flaws render the results of the attestation unreliable for any practical purpose in this docket.

¹¹⁵ Tr. 12/5/01 at 34-35.

¹¹⁶ Tr. 12/5/01 at 22-23.

¹¹⁷ Tr. 12/5/01 at 35-36.

The design of the attestation was materially flawed because of its limited scope. Three of the five major OSS functions -- provisioning, maintenance/repair, and billing -- were completely outside the scope of the attestation. Furthermore, the legacy systems that BellSouth utilizes to complete basic pre-ordering and ordering transactions (such as accessing telephone numbers, due dates, addresses, product and service information, and customer service records) also were outside the scope of the attestation.¹¹⁸ For those pre-ordering and ordering OSS that were within the scope of the attestation, PWC only examined the functionality of those OSS and not how well those OSS performed from state-to-state. For example, PWC only examined the service order entry for DOE and SONGS, but not how well those systems processed orders.¹¹⁹ In total, the PWC attestation was designed to examine only a small fraction of BellSouth's OSS.

PWC's execution of the attestation also was materially flawed. For example, PWC evaluated the "sameness" of BellSouth's OSS software by merely looking at whether the software code was the same size and version.¹²⁰ PWC, however, did not look within the code to assess whether there were any state-to-state differences in functionality, even though it had evidence that such differences existed.¹²¹ Similarly, PWC had evidence that the reliability of BellSouth's OSS varied from state-to-state, but PWC failed to analyze readily-available system outage reports to ascertain state-to-state differences.¹²²

¹¹⁸ See Tr. 12/5/01 at 46-47.

¹¹⁹ Tr. 12/5/01 at 102.

¹²⁰ Tr. 12/5/01 at 56.

¹²¹ Tr. 12/5/01 at 56.

¹²² Tr. 12/5/01 at 71, 155-56.

PWC also failed to fully examine the performance of BellSouth's LCSCs. For instance, PWC noted differences in error rates, performance standards, and training between BellSouth's Atlanta and Birmingham LCSCs.¹²³ Nevertheless, PWC asserts that there are no significant aspects of the processes, personnel, and work center facilities at BellSouth's LCSCs that would provide one state a greater level of service than the other states in BellSouth's region.¹²⁴ Incredibly, PWC makes this assertion without comparing performance levels between BellSouth's LCSCs to determine if there is, in fact, similar performance, even though such information was available.¹²⁵ This impacts regionality because former South Central Bell states rely more heavily on the Birmingham LCSC than the Atlanta LCSC.¹²⁶

PWC also attested that there were no material differences between DOE and SONGS,¹²⁷ despite finding a significant disparity in the average input time between the two systems.¹²⁸ Specifically, PWC determined that the average input time for DOE was 8 minutes and 22 seconds, while SONGS only required 5 minutes and 25 seconds.¹²⁹ This represents almost a three-minute difference between the two systems, which can have a significant impact on performance. For example, a representative at the LCSC using DOE to input orders could input

¹²³ Tr. 12/5/01 at 86, 87, 91-92.

¹²⁴ Tr. 12/5/01 at 76; *see also* McElroy Revised Redacted Direct, Exhibit MM-14 at 3.

¹²⁵ Tr. 12/5/01 at 76-77.

¹²⁶ Tr. 12/5/01 at 90-91.

¹²⁷ McElroy Revised Redacted Direct, Exhibit MM-14 at 3. DOE and SONGS are two of the order entry systems used by personnel at the LCSCs to input manual or partially-mechanized orders into SOCS for downstream processing. DOE is used in former Southern Bell states (GA, FL, NC and SC), while SONGS is used in former South Central Bell states (LA, MS, TN, AL, and KY).

¹²⁸ Tr. 12/5/01 at 163.

¹²⁹ *Id.*

approximately 60 orders in one day, versus 96 orders for the representative using SONGS.¹³⁰ PWC also observed that DOE and SONGS had different processes for deriving due dates, yet PWC did not check to verify if either system resulted in different due dates.¹³¹ This is important because many critical CLEC functions require accurate and timely due date calculation. Despite these significant differences, PWC summarily concluded that no material differences exist between DOE and SONGS.

The Authority Cannot Rely On PWC's Judgment Or Independence

The degree of confidence that the Authority can place on Mr. Lattimore's judgment and independence is an important factor in determining the weight that should be afforded PWC's attestation, should the Authority deem the attestation to be relevant. This is especially true here because the PWC attestation simply stated an opinion but did not explain the facts and reasoning that PWC relied on to form that opinion.¹³² Since this information is largely not in the record, this Authority cannot readily make its own independent assessment of the soundness and independence of PWC's judgment on particular issues. Accordingly, the Authority must decide to what extent it should trust Mr. Lattimore's judgment.

Mr. Lattimore displayed questionable judgment in his designation of "confidential" documents in this docket. Mr. Lattimore submitted an affidavit to this Authority essentially attesting that all of the documents produced by PWC were confidential under the terms of the Authority's protective order. Mr. Lattimore, however, did not review the terms of the protective

¹³⁰ Tr. 12/5/01 at 164-65.

¹³¹ Tr. 12/5/01 at 104-05.

¹³² Tr. 12/5/01 at 60-64.

order to ascertain the Authority's standards for confidential treatment, nor did he review any of the documents before attesting to their confidentiality.¹³³ Instead, Mr. Lattimore simply applied PWC's self-serving policy that all PWC "work papers" are confidential, and made the broad assumption that all the documents to be produced were "work papers."¹³⁴ These so-called "confidential" documents, however, include documents that Mr. Lattimore agrees are publicly available.¹³⁵ Mr. Lattimore, moreover, even marked as confidential the portion of his deposition transcript concerning his business address.¹³⁶

PWC's business relationship with BellSouth also raises questions about the independence of the attestation. BellSouth is Mr. Lattimore's biggest client, and Mr. Lattimore has spent approximately 60 percent of his time over the past several years working on BellSouth matters.¹³⁷ PWC received approximately \$30 million from BellSouth in the year 2000 alone, and approximately \$800,000 for the attestation.¹³⁸ According to Mr. Lattimore, the goal of the attestation was to determine that BellSouth's OSS were regional.¹³⁹ In fact, if the goal of the attestation had been to determine that BellSouth's OSS were not regional, Mr. Lattimore admits that he probably would have conducted the engagement differently.¹⁴⁰ Given PWC's financial

¹³³ Tr. 12/4/01 at 256, 259-61.

¹³⁴ See Tr. 12/4/01 at 258-59.

¹³⁵ Tr. 12/4/01 at 259-61.

¹³⁶ See Tr. 12/4/01 at 264-65.

¹³⁷ Tr. 12/5/01 at 36-37.

¹³⁸ *Id.*

¹³⁹ Tr. 12/5/01 at 38.

¹⁴⁰ Tr. 12/5/01 at 38.

relationship with BellSouth and the undisputed goal of PWC's attestation, the Authority can have little or no confidence that PWC's attestation was truly independent and untainted by its business relationship with BellSouth.

The Authority should not rely on PWC's attestation because it has no probative value. PWC did not attest that out-of-state performance data is applicable to Tennessee. Indeed, Mr. Lattimore testified that it would be inappropriate to use PWC's attestation to make that argument, and that PWC would have structured its attestation differently if it were to make such an attestation. In addition, PWC's attestation was materially flawed in both its design and execution. The evidence in the record also raises serious questions about PWC's judgment and independence in this matter. For all of these reasons, the Authority should find that PWC's attestation has no probative value for Phase I issues.

CONCLUSION

The objective of Phase I is to determine whether out-of-state performance data -- in this case the Georgia third-party test and performance data based on commercial usage in another state -- is applicable to Tennessee. To make that determination, the Authority must evaluate the extent to which BellSouth's OSS performance varies from state-to-state. If BellSouth cannot demonstrate that its OSS performance is substantially the same from state-to-state, the Authority can have no reasonable degree of confidence that out-of-state performance data is truly reflective of BellSouth's actual OSS performance in Tennessee.

The evidence in the record here indicates that BellSouth's OSS performance can and does vary substantially from one state to another. BellSouth concedes that its OSS performance varies substantially from state-to-state and comparative performance data confirms that fact. Mr. Lattimore, moreover, testified that it would not be appropriate to use the PWC attestation to support the argument that performance data in another state can be used as a surrogate for

Tennessee-specific data. In addition, neither Mr. Lattimore nor Mr. Weeks was willing to testify that the Georgia third-party test was applicable to Tennessee. For these reasons and the reasons provided above, the Authority should hold that BellSouth has not demonstrated that the Georgia third-party test results or performance data from another state is applicable for the purpose of determining whether BellSouth's OSS in Tennessee complies with state and federal law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 1st day of March, 2002.

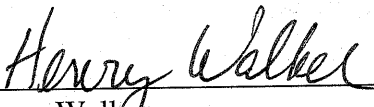
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